

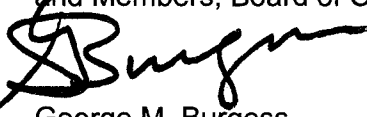


Memorandum

Agenda Item No. 7(A)(1)(A)

To: Honorable Chairperson Barbara Carey-Shuler, Ed.D
and Members, Board of County Commissioners

Date: October 19, 2004

From: 
George M. Burgess
County Manager

Subject: Final Change Order No. 4
GTI: Drives Extension
South Side
MDAD Project No.
92091M61

RECOMMENDATION

The attached Final Change Order No. 4 to the contract between Odebrecht Contractors of Florida, Inc., and Miami-Dade County has been prepared by Dade Aviation Consultants (DAC) with the concurrence of the Miami-Dade Aviation Department (MDAD), approved by the County Manager pursuant to the provisions of Expedite Ordinance No. 95-64, and is recommended for ratification by the Board.

Final Change Order No. 4 will close out and credit the contract \$636,323 for unused allowance accounts funds and deleted work and will also extend the contract completion time by 67 calendar days to November 5, 2002. Additionally, this Change Order will cause the release of all remaining contract payments by the County (other than the two credits) and the contractor will release the County from any and all claims on the project.

BACKGROUND

Substantial completion of the GTI Drives Extension project was reached on November 5, 2002. Contractually, completion of the work was to be on August 30, 2002. However, at the end of the project there were several outstanding issues with the contractor:

1. Five unresolved claims from the contractor (nos. 1, 3, 4, 5, and 6) totaling \$2,845,635 and 585 days of requested contract time extension.
2. Contractor reserved its rights from previous change orders and change proposal requests totaling \$376,512 that was not accepted by MDAD/DAC.
3. Value of contracted work totaling \$952,512 that was withheld from payment pending resolution of all disputes.

The total amount requested by the contractor was \$4,174,659 and 585 days in contract time extensions.

At the same time, MDAD had a counterclaim of \$349,539.90 for alleged defective work pertaining to the joint sealer at the APM columns and cracks in the concrete deck.

The County's negotiating team (consisting of MDAD, DAC, HNTB, the A/E and the CIS) and the contractor negotiated these issues numerous times since substantial completion of the project but could not reach agreement. In an effort to resolve the issues, the County Attorney's Office hired an independent third party consultant, mutually acceptable to all parties, to review the contractor's claims, MDAD's position on them, and MDAD's counterclaim.

On February 18, 2004, the independent consultant presented its findings. Based, in part, on these findings, the contractor and the MDAD reached agreement on a settlement of these issues, which is endorsed by the negotiating team.

CHANGE ORDER NO.: 4 (Final)

PROJECT: GTI: Drives Extension South Side

PROJECT NO.: 92091M61

PROJECT LOCATION: Miami International Airport

PROJECT DESCRIPTION: This project extends the upper and lower vehicle drives approximately 1200 feet beyond Concourse H to the future perimeter road bridge (separate project). One ramp will connect the extended upper vehicle drive with Central Boulevard. Another ramp will connect upper vehicle drive with 20th Street. The project includes a fire sprinkler system, a sewer pump station, and underground utilities critical to the South Terminal and MIA Terminal improvements. Columns and foundations for the future Automated People Mover system are also included.

PRIME CONTRACTOR: Odebrecht Contractor of Florida, Inc.

COMPANY PRINCIPAL(S): Luis Rocha, President

CERTIFIED AS CSBE AT TIME OF AWARD: No

COMPANY QUALIFIER(S): Steve A. Binford, CG CO35876

LOCATION OF COMPANY: Miami-Dade County

YEARS IN BUSINESS: Twelve years

CSBE MEASURE AT AWARD: No measure. CSBE program was not in effect at time of award.

CURRENT CSBE STATUS: NA. CSBE program was not in effect at time of award.

**PREVIOUS CONTRACTS WITH
WITH COUNTY IN THE PAST
FIVE YEARS:**

Three contracts for \$68,028,499
(See DBD Firm History Report)

ORIGINAL COST ESTIMATE: \$47,700,777

**ORIGINAL CONTRACT
AMOUNT:** \$31,699,506

**CONTINGENCY FUND
USAGE:**

Original Account Amount	\$6,023,850
Account Decreases	(\$2,786,323)
Current Balance Remaining	\$ 291,135

PREVIOUS CHANGE ORDERS: Change Order No. 1	(\$ 3,067,231)
Change Order No. 2	\$ 465,000
Change Order No. 3	\$ 214,986

**CHANGE ORDER
RECOMMENDATION:**

Add 67 days to the contract time and decrease the contract amount by \$636, 323.

**CLASSIFICATION FOR
CHANGE ORDER:**

County Requested Change

**ADJUSTED CONTRACT
AMOUNT INCLUDING THIS
CHANGE ORDER:**

\$28,675,938.10

**PERCENT OF DECREASE
THIS CHANGE ORDER
FROM ORIGINAL
CONTRACT AMOUNT:**

-2.0%

**PERCENTAGE OF DECREASE
OF THIS CHANGE ORDER
FROM PREVIOUSLY ADJUSTED
CONTRACT AMOUNT:**

-2.2%

**TOTAL PERCENTAGE
DECREASE FROM ORIGINAL
CONTRACT AMOUNT:**

-9.5%

ORIGINAL CONTRACT

COMPLETION DATE: December 10, 2000

**TIME EXTENSION ON
PREVIOUSCHANGE**

ORDERS: CO #1 – 245 days to August 12, 2001
CO #3 – 383 days to August 30, 2002

ACTUAL COMPLETION DATE: November 5, 2002

USING AGENCY: Miami-Dade Aviation Department

FUNDING SOURCE: Airport Revenue Bonds

**APPROVED AS TO LEGAL
SUFFICIENCY:** Yes

DBD REVIEW: Yes

ALTERNATIVE

Ratifying the County Manager's approval of Final Change Order No. 4 to the subject project will allow the final closeout of the project and release all remaining payments by the County and releases by the Contractor. Failure to ratify the actions of the County Manager will result in the delay of the realization of the balance of the contract into the CIP overall budget. It also may result in the contractor taking legal action for the delay of payments.



ASSISTANT COUNTY MANAGER




MEMORANDUM

(Revised)

TO: Hon. Chairperson Barbara Carey-Shuler, Ed.D.
and Members, Board of County Commissioners

DATE: October 19, 2004

FROM: 
Robert A. Ginsburg
County Attorney

SUBJECT: Agenda Item No. 7(A)(1)(A)

Please note any items checked.

- ☐ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Bid waiver requiring County Manager's written recommendation
- ☐ Ordinance creating a new board requires detailed County Manager's report for public hearing
- ☐ Housekeeping item (no policy decision required)
- ☐ No committee review

Approved _____ Mayor

Agenda Item No. 7(A)(1)(A)

Veto _____

10-19-04

Override _____

RESOLUTION NO. _____

**RESOLUTION RATIFYING ACTIONS OF COUNTY
MANAGER, PURSUANT TO PROVISIONS OF ORDINANCE
NO. 95-64, IN EXECUTING CHANGE ORDER NO. 4
(FINAL) TO PROJECT NO. 92091M61, GTI: DRIVES
EXTENSION SOUTH SIDE AT MIAMI INTERNATIONAL
AIRPORT, WITH ODEBRECHT CONTRACTORS OF
FLORIDA, INC.**

WHEREAS, this Board desires to accomplish the purposes
outlined in the accompanying memorandum and documents, copies of
which are incorporated herein by reference,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY
COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA**, that pursuant to
Ordinance 95-64, this Board approves, ratifies and confirms the
action of the County Manager in executing Change Order No. 4
(Final) to Project No. 92091M61 for GTI: Drives Extension South
Side at Miami International Airport, with Odebrecht Contractors
of Florida, Inc., which change order, among other matters,
increases the contract time and decreases the contract amount by
\$636,323.00, all as more particularly set forth in the
accompanying memorandum from the County Manager.

The foregoing resolution was offered by Commissioner
, who moved its adoption. The motion was seconded
by Commissioner and upon being put to a
vote, the vote was as follows:

Dr. Barbara Carey-Shuler, Chairperson	
Katy Sorenson, Vice-Chairperson	
Bruno A. Barreiro	Jose "Pepe" Diaz
Betty T. Ferguson	Sally A. Heyman
Joe A. Martinez	Jimmy L. Morales
Dennis C. Moss	Dorrin D. Rolle
Natacha Seijas	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this
19th day of October, 2004. This Resolution and contract, if not vetoed, shall become
effective in accordance with Resolution No. R-377-04.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

DBM

Deborah Bovarnick Mastin

**MIAMI - DADE COUNTY
CHANGE ORDER TO ORIGINAL CONTRACT**

CHANGE ORDER NO. 4 (Final)

PROJECT NO. 92091M61

DATE: ~~draft 4/15/02a~~

PROJECT NAME: GTI: Drives Extension South Side

TO CONTRACTOR: Odebrecht Contractors of FL

YOU ARE HEREBY REQUESTED TO MAKE THE FOLLOWING CHANGES TO THE CURRENT CONTRACT, AND TO PERFORM THE WORK SUBJECT TO ALL CONTRACT STIPULATIONS AND COVENANTS.

ITEM NO.	DESCRIPTION	AMOUNT
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ITEMIZATION AND DESCRIPTIONS BEGIN ON PAGE 2 OF THIS CHANGE ORDER

SUMMARY OF CONTRACT AMOUNT

	ORIGINAL CONTRACT AMOUNT	\$31,699,506.00
REASON FOR CHANGE:	COST OF CONSTRUCTION CHANGES PREVIOUSLY ORDERED	-\$2,387,244.90
<input type="checkbox"/> Regulatory Change	ADJUSTED CONTRACT AMOUNT PRIOR TO THIS CHANGE ORDER ..	\$29,312,261.10
<input type="checkbox"/> Other Agency Requested Change	COST OF CONSTRUCTION CHANGES THIS ORDER	-\$636,323.00
<input type="checkbox"/> Design Errors Change	ADJUSTED CONTRACT AMOUNT INCLUDING THIS CHANGE ORDER ..	\$28,675,938.10
<input type="checkbox"/> Design Omission Change	PER CENT INCREASE, THIS CHANGE ORDER	-2.0%
<input type="checkbox"/> County Requested Change	TOTAL PER CENT INCREASE TO DATE	-9.5%
<input type="checkbox"/> Unforeseen or Unforeseeable Change	EXTENSION OF TIME ALLOWED BY THIS CHANGE 57 CALENDAR DAYS TO 11/5/02	

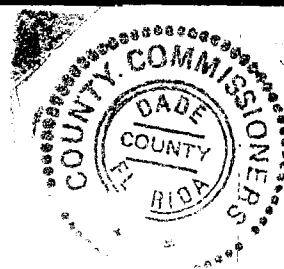
CERTIFYING STATEMENT: I hereby certify that the supporting cost data included is, in my considered opinion, accurate; that the prices quoted are fair and reasonable and in proper ratio to the cost of the original work contracted for under ~~benefit~~ competitive bidding, *as negotiated contract based on*

Eugene R. Richards
SIGNATURE CONSULTING ARCHITECT OR ENGINEER

TO BE FILLED OUT BY DEPARTMENT INITIATING CHANGE ORDER

DEPARTMENT: <i>Public Works</i>	FUNDS BUDGET CODE: <i>72612504</i>	CERTIFIED BY: _____
ACCEPTED BY: <i>Juli A. Russell</i>	CONTRACTOR: <i>05/13/04</i>	APPROVED: <i>Chris C</i> 7/30/04
RECOMMENDED: <i>Juli A. Russell</i>	PROJECT MANAGER: <i>Chief Architect</i>	DADE COUNTY, Florida By the BOARD OF COUNTY COMMISSIONERS
APPROVED: <i>Chief Architect</i>	DEPT. BUSINESS DEVELOPMENT	By: <i>Butt Johnson</i> DATE: _____
APPROVED: <i>La Marsha Jackson</i>	DEPARTMENTAL DIRECTOR	ATTEST: <i>Clayton</i> 8/4/04 By: _____ Deputy Clerk

cc: A/E Consultant, General Contractor, Surety, Project Manager, HNTB, D.A.C. Contracts Administration
*United States Fidelity and Guaranty Company



**MIAMI - DADE COUNTY
CHANGE ORDER TO ORIGINAL CONTRACT**

CHANGE ORDER NO. 4 (Final)

PROJECT NO. 92091M61

DATE: ~~draft 4/16/04a~~

PROJECT NAME: GTI: Drives Extension South Side

TO CONTRACTOR: Odebrecht Contractors of FL

ITEM NO.	DESCRIPTION	AMOUNT
1	Reduce the Contract Amount to delete all unused IPSIG and Inspector General Allowance Accounts funds. JUSTIFICATION: COUNTY REQUESTED CHANGE	-\$286,323
2	Reduce the Contract Amount as a credit to pay for the repair of work pertaining to the joint sealer at the APM columns and hair cracks on the bottom of the concrete deck, which will be performed by others. JUSTIFICATION: COUNTY REQUESTED CHANGE	-\$350,000
3	Extend the Contract Time by 67 days as part of the global settlement with the Contractor	\$ -0-

SUPPLEMENTAL INFORMATION

The County's negotiating team (consisting of MDAD, DAC, HNTB, the A/E and the CIS) and the Contractor negotiated these issues numerous times since Substantial Completion but could not reach agreement. The County Attorney's Office then hired an independent third party consultant, mutually acceptable to all parties, to review the Contractor's claims, MDAD's position on them, and MDAD's counterclaim. On February 18, 2004, the independent consultant presented its findings. Based, in part, on these findings, the Contractor and the MDAD reached agreement on a settlement of these issues, which is endorsed by the negotiating team. The negotiated settlement includes:

- a. The release of all remaining Contract money by the County except the two credits in Items 1 and 2, which total \$636,323. In exchange, the Contractor releases the County from any and all claims on the project.
- b. An extension in the Contract Time of 67 days.

RELEASE OF CLAIM

In consideration of and conditional upon payment to Contractor by Miami-Dade County (hereinafter "County"), of the final Contract Amount shown on the cover page, which amount includes the final Pay Application in this contract, the Contractor releases County, and its officers, employees and agents from, and waives and relinquishes any and all claims, disputes or causes of action it has or may have against the County, and its officers, employees and agents arising out of, or in connection with, the Change Order or the work performed or to be performed under the Contract Documents.

The Contractor accepts the Final Pay Application and the Final Contract Amount as full accord and satisfaction of all monies due it under or in connection with the Contract Documents and the work performed under the Contract Documents.

By accepting the work which has been performed under the Contract Documents, the County releases the Contractor and its officers, employees, subcontractors and agents from, and waives and relinquishes any and all claims, disputes or causes of action it has or may have against the Contractor and its officers, employees, subcontractors and agents arising out of, or in connection with, the Change Order or the work performed or to be performed under the Contract Documents; provided, however, Contractor and County agree that the above waiver and release on behalf of the County does not waive and release any claims of the County, for which the County expressly reserves the right, with respect to:

- (1) To require the repair or replacement of defective work under the warranty and guaranty provisions of the Contract Documents; provided, however, that this provision shall not apply to the joint sealer at the APM columns nor to the ~~hair cracks on the bottom of the~~ concrete deck;
- (2) To require the repair or replacement of latent defects in the work to the extent provided by Florida law;

MIAMI - DADE COUNTY
CHANGE ORDER TO ORIGINAL CONTRACT

CHANGE ORDER NO. 4 (Final)

PROJECT NO. 92091M61

DATE: ~~04/16/04~~

PROJECT NAME: GTI: Drives Extension South Side

TO CONTRACTOR: Odebrecht Contractors of FL

[Signature] provided, however, that this provision shall not apply to the joint sealer at the APM columns or to the hair cracks on the bottom of the concrete deck;

- (3) To perform audits and seek reimbursement of any overpayments discovered as a result of an audit, as provided in the Contract Documents;
- (4) To enforce those provisions of the Contract Documents which specifically provide that they survive the completion of the work; and
- (5) To enforce the terms of the Payment and Performance Bonds against Surety.

Contractor has read these provisions prior to executing the Final Change on the cover page of this document and understands its rights.

Seaboard Surety Company
 St. Paul Fire and Marine Insurance Company
 St. Paul Guardian Insurance Company
 St. Paul Mercury Insurance Company

United States Fidelity and Guaranty Company
 Fidelity and Guaranty Insurance Company
 Fidelity and Guaranty Insurance Underwriters, Inc.

Power of Attorney No. 23945

Certificate No. 1850278

KNOW ALL MEN BY THESE PRESENTS: That Seaboard Surety Company is a corporation duly organized under the laws of the State of New York, and that St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company are corporations duly organized under the laws of the State of Minnesota, and that United States Fidelity and Guaranty Company is a corporation duly organized under the laws of the State of Maryland, and that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc. is a corporation duly organized under the laws of the State of Wisconsin (*herein collectively called the "Companies"*), and that the Companies do hereby make, constitute and appoint

Juli A. Russell, Michael F. Yadach and Brian V. Fitzsimmons

Sunrise

Florida

of the City of _____, State _____, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety to, and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and sealed this 26th day of June, 2003.

Seaboard Surety Company
 St. Paul Fire and Marine Insurance Company
 St. Paul Guardian Insurance Company
 St. Paul Mercury Insurance Company

United States Fidelity and Guaranty Company
 Fidelity and Guaranty Insurance Company
 Fidelity and Guaranty Insurance Underwriters, Inc.



PETER W. CARMAN, Vice President

THOMAS E. HUIBREGTSE, Assistant Secretary

State of Maryland
 City of Baltimore

On this 26th day of June, 2003, before me, the undersigned officer, personally appeared Peter W. Carman and Thomas E. Huibregtse, who acknowledged themselves to be the Vice President and Assistant Secretary, respectively, of Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, United States Fidelity and Guaranty Company, Fidelity and Guaranty Insurance Company, and Fidelity and Guaranty Insurance Underwriters, Inc.; and that the seals affixed to the foregoing instrument are the corporate seals of said Companies; and that they, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the names of the corporations by themselves as duly authorized officers.

In Witness Whereof, I hereunto set my hand and official seal.

My Commission expires the 1st day of July, 2006.



REBECCA EASLEY-ONOKALA, Notary Public



JULI ALAINE RUSSELL

A228695

Gen. Lines (Prop. & Cas. Ins.)

ISSUED: 01/08/92

733631

Juli A. Russell